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NIXON PEABODY LLP  
101 Federal Street  
Boston, Massachusetts 02110

Attorney's Docket N . 701039-051580

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**DECLARATION AND POWER OF ATTORNEY**

As a below named inventor, I hereby declare that: My residence, post office address and citizenship are as stated below next to my name. I believe I am the original, first and sole inventor (if only one name is listed at 201) below or an original, first and joint inventor (if plural names are listed at 201-208 below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

APPARATUS AND METHOD FOR EVALUATING TISSUE ENGINEERED BIOLOGICAL MATERIAL

which is described and claimed in:

- the specification attached hereto.
- the specification in U.S. Application Serial Number 10/056,991 filed on 01/25/2002; and
- the specification in PCT International Application Number \_\_\_\_\_ filed on \_\_\_\_\_ and amended on \_\_\_\_\_;

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above. I acknowledge the duty to disclose information which is material to the examination of this application in accordance with Title 37, Code of Federal Regulations, §1.56(a). I hereby claim foreign priority benefits under Title 35, United States Code, §119 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed.

| <b>Prior Foreign/PCT Applications and Any Priority Claims Under 35 U.S.C. §119:</b> |                    |                |  |
|---|--------------------|----------------|--|
| <b>Application No.</b>  | <b>Filing Date</b> | <b>Country</b> | <b>Priority Claimed under 35 U.S.C. §119?</b>            |
|   |                    |                | <input type="checkbox"/> YES <input type="checkbox"/> NO |
|   |                    |                | <input type="checkbox"/> YES <input type="checkbox"/> NO |
|   |                    |                | <input type="checkbox"/> YES <input type="checkbox"/> NO |
|   |                    |                | <input type="checkbox"/> YES <input type="checkbox"/> NO |

I hereby claim the benefit under 35 U.S.C. §120 of any United States application(s) or PCT international application(s) designating the United States of America that is/are listed below, and, insofar as the subject matter of each of the claims of this application is not disclosed in that/those prior application(s) in the manner provided by the first paragraph of 35 U.S.C. §112, I acknowledge the duty to disclose material information as defined in 37 CFR §1.56(a) which occurred between the filing date of the prior application(s) and the national or PCT international filing date of this application:

| Prior U.S. Applications or PCT International Applications Designating the U.S-Benefit<br>under 35 U.S.C. §120 |                  |                          |         |           |
|---|------------------|--------------------------|---------|-----------|
| U.S. Applications   |                  | Status (Check One)       |         |           |
| Application Serial No.  | U.S. Filing Date | Patented                 | Pending | Abandoned |
|   |                  |                          |         |           |
|   |                  |                          |         |           |
|   |                  |                          |         |           |
| PCT Applications Designating the U.S.   |                  |                          |         |           |
| Application No.   | Filing Date      | U.S. Serial No. Assigned |         |           |
|   |                  |                          |         |           |
|   |                  |                          |         |           |
|   |                  |                          |         |           |

**CLAIM FOR BENEFIT OF PRIOR U.S. PROVISIONAL APPLICATION(S)  
 (35 U.S.C. §119(e))**

I hereby claim the benefit under Title 35, United States Code, §119(e) of any United States provisional application(s) listed below:

| Applicant | Provisional Application Number | Filing Date |
|-----------|--------------------------------|-------------|
|           |                                |             |
|           |                                |             |
|           |                                |             |

**POWER OF ATTORNEY:** As a named inventor, I hereby appoint the following attorney(s) with full powers of association, substitution and revocation to prosecute this application and transact all business in the Patent and Trademark Office connected therewith.

|  |                                      |                                      |
|--|--------------------------------------|--------------------------------------|
| Ronald I. Eisenstein (Reg. No. 30,628) | David S. Resnick (Reg. No. 34,235)   | Michael L. Goldman (Reg. No. 30,727) |
| Nicole L.M. Valtz (Reg. No. 47,150)    | Lana A. Shvartsman (Reg. No. 48,502) | Georgia Evans (Reg. No. 44,957)      |
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| Edwin V. Merkel (Reg. No. 40,087)      | Joseph Noto (Reg. No. 32,163)        |                                      |

|  |   |
|--|---|
| <b>SEND CORRESPONDENCE TO:</b><br>David S. Resnick<br>NIXON PEABODY LLP<br>101 Federal Street<br>Boston, Massachusetts 02110 | <b>DIRECT TELEPHONE CALLS TO:</b><br>David S. Resnick<br>(617) 345-6057 |
|--|---|

|     |                         |  |                                       |  |
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| 201 | FULL NAME OF INVENTOR   | LAST NAME<br><b>Perry</b>                                | FIRST NAME<br><b>Tj rvi</b>           | MIDDLE NAME<br><b>Ellert</b>                     |
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| 203 | FULL NAME OF INVENTOR   | LAST NAME<br><b>Mayer, Jr.</b>                  | FIRST NAME<br><b>John</b>             | MIDDLE NAME<br><b>E.</b>                         |
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I hereby further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

|   |                        |
|---|------------------------|
| Signature of Inventor 201 (T. Perry)      | Date:<br><b>8/4/02</b> |
| Signature of Inventor 202 (F. Sutherland) | Date:<br><b>8/1/02</b> |
| Signature of Inventor 203 (J. Mayer, Jr.) | Date:<br><b>9/6/02</b> |